

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION NO.31086 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking to issue writ of mandamus declaring the proceedings in Rc.No.184/2016-CS, dated 28.4.2016 issued by the second respondent as illegal and arbitrary.

2. Heard learned counsel for the petitioner and the learned Assistant Government Pleader for Civil Supplies (Andhra Pradesh).

3. It is the case of the petitioner that she was appointed as Fair Price Shop dealer of shop No.2/ICH/04 of Balakrishnapuram, Itchapuram Mandal, Srikakulam District on 04.12.2001. It is her further case that she has been distributing the essential commodities to the card holders without any complaint of whatsoever. While so, Deputy Tahsildar, Itchapuram visited the shop of the petitioner on 01.10.2015 and allegedly found certain irregularities. The third respondent issued show cause notice to the petitioner on 20.2.2016 calling for her explanation. The petitioner submitted her explanation on 15.3.2016. Being not satisfied with the explanation submitted by the petitioner, the second respondent passed the orders on 28.4.2016 suspending the authorization of the petitioner indefinitely.

4. The predominant contention of the learned counsel for the petitioner is that the order passed by the second respondent is nothing but cancellation of the authorization of the petitioner, which would fall within the ambit of Sub-clause (5) of Clause 5 of the Andhra Pradesh State Public Distribution System (Control) Order, 2008. **Per contra**, learned Assistant Government Pleader submitted that

after affording reasonable opportunity to the petitioner, the second respondent passed the impugned order. He further submitted that the order passed by the second respondent is, therefore, legally sustainable.

5. A perusal of the record *prima facie* reveals that the order passed by the second respondent falls within the ambit of Sub-clause (5) of Clause 5 of the Control Order, as the said order is, in one way, seems to be passed as a measure of punishment.

6. Learned counsel for the petitioner submitted that the issue involved in this writ petition is squarely covered by the order of a Division Bench of this Court in Writ Appeal No.746 of 2016.

7. In order to appreciate the rival contentions, it is not out of place to extract the relevant portion in the order in writ appeal, which reads thus:

“The only question which we are required to examine is whether an order of suspension, for an indefinite period, could have been passed as a measure of punishment as that would amount to cancellation which is also one of the punishments prescribed in Clause 5 (5) of the Control Order, but which the 3rd respondent has chosen not to pass.

While we are satisfied that the 3rd respondent ought to have fixed the period of suspension, it would be wholly inappropriate for us in proceedings under Article 226 of the Constitution of India, to do so. In such circumstances, we consider it appropriate to set aside the order of the 3rd respondent and direct him to fix the period during which the order of suspension shall remain in force. The 3rd respondent shall pass an order, in accordance with the directions aforementioned, within two weeks from the date of receipt of a copy of this order.”

8. As rightly pointed out by the learned counsel for the petitioner the facts of the case on hand are almost similar to the facts of the case cited *supra*.

9. Having regard to the facts and circumstances of the case and also the orders of the Division Bench referred *supra*, the order passed by the second respondent in

Rc.No.184/2016-CS, dated 28.4.2016 is hereby set aside. The second respondent shall pass fresh orders, in accordance with the above directions, within a period of two weeks from the date of receipt of a copy of this order.

10. Accordingly, the writ petition is allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

September 20, 2016

NOTE:

Dispatch order copy in one week.

(By order)

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